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Lawrence H. Norton, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

**Re: MUR 5672**

Dear Mr. Norton:

This letter is in response to the complaint filed in MUR 5672. The response is filed on behalf of respondents Jack Davis and Jack Davis for Congress. For the reasons given below, the Commission should take no action on this complaint and the matter should be summarily dismissed. As the attorney complainant in this matter is presumably aware, the Commission will dismiss a complaint that fails to allege specific facts which if proven true would constitute a violation of Federal Election Campaign Act ("the Act"). See 11 C.F.R. 111.4(d), 111.5(b) (2005). This complaint falls woefully short of meeting this standard.

In fact the complaint is no more than an attempt to misappropriate the Commission's enforcement procedures to smear Respondents and Mr. Davis in particular, whether in retribution for Mr. Davis' prior campaign for Congress, or for fear that he might undertake another such campaign. As such, it is an abuse of process. The Commission should not acquiesce in this misuse of its procedures and should quickly dismiss the complaint.

Jack Davis was a candidate for Congress during the 2004 election cycle. Jack Davis for Congress was his principal campaign committee in that election; it remains registered with the Commission as it winds down its 2004 cycle activities. The complaint appears to assert that Mr. Davis, as a supposed candidate for Congress in the 2006 election cycle, is receiving contributions for his alleged, "new" campaign through the political activities that he is now undertaking in connection with other organizations – notably, the Save American Jobs Association and the Save Jobs Party.

To make out a violation of the Act, the complaint would need to allege that Jack Davis is now a "candidate" for the purposes of the law. This is demonstrably not the case, which probably explains why the complainant never straightforwardly makes the allegation. "Candidate" is a defined term under the Act. See 2 USC § 431(2) (2005). Unless Mr. Davis meets that definition, he could not have violated the law in

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the manner suggested by the complaint. To be considered a "candidate" for the purposes of the Act, Mr. Davis must either have received contributions or made expenditures exceeding \$5,000. Mr. Davis has not. We have enclosed an affidavit in which Mr. Davis attests that he has not engaged in any activity that would make him a candidate for Congress in 2006.

The Commission's regulations make clear the types of disbursements which, if they exceeded \$5,000, would make an individual a "candidate." Section 100.72(b) of the regulations lists those activities, which include the following:

- (1) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.
- (2) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.
- (3) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.
- (4) The individual conducts activities in close proximity to the election or over a protracted period of time.
- (5) The individual has taken action to qualify for the ballot under State law.

Complainant does not allege that Mr. Davis has engaged in any of these activities. The closest he comes is to claim that the Save American Jobs Association website includes a video from Mr. Davis's 2004 congressional campaign, in which Mr. Davis excoriates the trade policies of the current administration. The linked video is not general public political advertising, it does not publicize his intent to campaign for Federal office, and the link costs far less than \$5,000. Complainant does not allege otherwise. Nowhere does the complainant straightforwardly allege that Mr. Davis is a candidate. Because Mr. Davis is not a candidate, and because no allegation is made that he is, the Commission should quickly dismiss this matter.

The hollowness of the complaint becomes even more obvious in the section titled "Legal Analysis". The heading of part A of that section reads: "The Save American Jobs Association cannot operate as a 501(c)(4) nonprofit, because it engages in partisan politics." This statement has nothing to do with the Act or Commission regulations, and provides no basis for a violation. Yet even as a matter of tax law, this statement is simply wrong. Social welfare organizations organized and operating

under section 501(c)(4) of the Internal Revenue Code may engage in partisan politics. Political intervention in candidate elections cannot be the primary activity of a 501(c)(4) organization but nothing prevents such an organization from engaging in partisan and issue based activity.

Of course, the Commission has no authority to revoke the Save American Jobs Association's tax-exempt status, as complainant demands. The violation that the complainant imagines is neither a violation of the tax code nor of election law. The complaint is not strengthened by its references to the Save Jobs Party. This organization was created under New York law to support state and local candidates that share a concern that the national administration's trade policies will have a disastrous long term impact on jobs in New York. It has not made contributions or expenditures in support of candidates for federal office.

Nothing in the Act prevents people from organizing their activities in this way to promote a shared concern. More importantly for the purpose of this complaint, the fact that these organizations have chosen to operate in this manner does not implicate federal election law. As emphasized above, Jack Davis is not a candidate. No allegation about the tax status of the Save American Jobs Association alters that fact. For this reason, the complaint should be dismissed.

Part B of the "Legal Analysis" section is similarly deficient. As stated above, Mr. Davis is not a candidate for the purposes of the Act. Until such time as he chooses to become one, he is as free as any other citizen to criticize the trade policies of the present administration. If he finds that he can do so most effectively through a social welfare organization and through a political party organized and operating under New York law, that is his right.<sup>1</sup> The speciousness of the legal argument in Part B exposes the complaint for what it is – a political smear masquerading as a legitimate complaint.

Respondents find it regrettable that the attorney complainant in this matter has invoked an administrative process designed to protect the integrity of our elections for naked political advantage. Respondents respectfully request that the Commission recognize the legal insufficiency of the complaint and quickly dismiss it. A quick

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<sup>1</sup> It is interesting to note that Mr. Davis's opponent in the last election has employed a so-called "leadership committee" to promote his views on a wide variety of issues. Unless that committee violated an express regulation of the Commission, respondents understand there would be no basis for a complaint.

resolution may not completely deny the complainant the imagined political benefits that he seeks, but it will serve to protect the integrity of the Commission enforcement process.

Very truly yours,

A handwritten signature in black ink, appearing to read "Karl J. Sandstrom". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

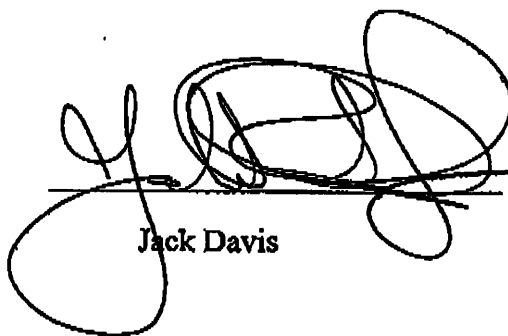
Karl J. Sandstrom  
Brian G. Svoboda  
Counsel to Respondents

**Declaration of Jack Davis in MUR 5672**

1. I am Jack Davis, a named respondent in the above referenced matter.
2. I was a candidate for election to United States House of Representatives in the general election held on November 2, 2004.
3. My principal campaign committee in the above referenced election was "Jack Davis for Congress." That committee is also a named respondent in the above referenced matter.
4. I am not now nor have I been a candidate, as that term is defined and used in the Federal Election Campaign Act, for nomination or election to United States House of Representatives in 2006.
5. Neither I nor anyone authorized by me has accepted contributions or made expenditures, as those terms are defined and used in the Federal Election Campaign Act, for nomination or election for federal office in 2006.

I declare under the penalty of perjury that the foregoing is to the best of my knowledge true and correct.

Executed this 19 day of September, 2005.



Jack Davis